

SENATE BILL 206

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P2

2004 Regular Session
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CF 4r1211

By: **Senators Brochin, Forehand, Garagiola, and Hollinger**
Introduced and read first time: January 28, 2004
Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 16, 2004

CHAPTER _____

1 AN ACT concerning

2 **Procurement Proposed Capital Projects - Planning - High Performance**
3 **Buildings - Price Preferences**

4 ~~FOR the purpose of establishing certain price preferences for high performance~~
5 ~~buildings in the award of certain public contracts by competitive sealed bid or~~
6 ~~competitive sealed proposal; creating a certain exception to the requirement~~
7 ~~that a procurement officer award public contracts under a competitive sealed~~
8 ~~bid procurement to the lowest responsive bid price or evaluated bid price;~~
9 ~~requiring a statement of evaluation factors in certain requests for sealed~~
10 ~~proposals to include the high performance buildings price preference requiring a~~
11 ~~unit of State government requesting an appropriation for the preliminary~~
12 ~~planning of a proposed capital project to include in its program submission to~~
13 ~~the Department of Budget and Management a justification for proposing that~~
14 ~~the building should be designed as a high performance building; defining a~~
15 ~~certain term; making certain stylistic changes; and generally relating to price~~
16 ~~preferences for high performance buildings in the award of certain public~~
17 ~~contracts the planning and design of high performance buildings in proposed~~
18 ~~capital projects.~~

19 BY repealing and reenacting, with amendments,
20 Article - State Finance and Procurement
21 Section 13-101, 13-103(e)(1), and 13-104(b) and (f)
22 Section 3-602(d)
23 Annotated Code of Maryland
24 (2001 Replacement Volume and 2003 Supplement)

25 ~~BY repealing and reenacting, without amendments,~~

1 ~~Article—State Finance and Procurement~~
 2 ~~Section 13-102(a), 13-103(a), and 13-104(a)~~
 3 ~~Annotated Code of Maryland~~
 4 ~~(2001 Replacement Volume and 2003 Supplement)~~

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article - State Finance and Procurement**

8 ~~13-101.~~

9 (a) ~~In this subtitle the following words have the meanings indicated.~~

10 (b) ~~["Evaluated bid price" means the price of a bid after adjustment in~~
 11 ~~accordance with objective measurable criteria.~~

12 (c) (1) ~~"Objective measurable criteria" means standards that enable the~~
 13 ~~State to compare the economy, effectiveness, or value of the subject of the bids.~~

14 (2) ~~"Objective measurable criteria" includes standards of reliability,~~
 15 ~~operational costs, maintainability, useful life, and residual value.~~

16 (d) ~~"eMaryland Marketplace" means the Internet-based procurement system~~
 17 ~~managed by the Department of General Services.~~

18 (e)} ~~"Contract Weekly Online" means the Internet-based version of the~~
 19 ~~Maryland Contract Weekly.~~

20 (C) ~~"EMARYLAND MARKETPLACE" MEANS THE INTERNET BASED~~
 21 ~~PROCUREMENT SYSTEM MANAGED BY THE DEPARTMENT OF GENERAL SERVICES.~~

22 (D) ~~"EVALUATED BID PRICE" MEANS THE PRICE OF A BID AFTER ADJUSTMENT~~
 23 ~~IN ACCORDANCE WITH OBJECTIVE MEASURABLE CRITERIA.~~

24 (E) ~~"HIGH PERFORMANCE BUILDING" MEANS A BUILDING THAT ACHIEVES AT~~
 25 ~~LEAST:~~

26 (1) ~~A SILVER RATING ACCORDING TO THE U.S. GREEN BUILDING~~
 27 ~~COUNCIL'S LEED (LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN) GREEN~~
 28 ~~BUILDING RATING SYSTEM AS ADOPTED BY THE MARYLAND GREEN BUILDING~~
 29 ~~COUNCIL; OR~~

30 (2) ~~A COMPARABLE RATING ACCORDING TO ANY OTHER APPROPRIATE~~
 31 ~~RATING SYSTEM.~~

32 (F) (1) ~~"OBJECTIVE MEASURABLE CRITERIA" MEANS STANDARDS THAT~~
 33 ~~ENABLE THE STATE TO COMPARE THE ECONOMY, EFFECTIVENESS, OR VALUE OF~~
 34 ~~THE SUBJECT OF THE BIDS.~~

1 (2) "OBJECTIVE MEASURABLE CRITERIA" INCLUDES STANDARDS OF
2 RELIABILITY, OPERATIONAL COSTS, MAINTAINABILITY, USEFUL LIFE, AND RESIDUAL
3 VALUE.

4 ~~13-102.~~

5 (a) Except as provided in Subtitle 3 and Subtitle 4 of this title, all
6 procurement by units shall be by competitive sealed bids unless one of the following
7 methods specifically is authorized:

8 (1) competitive sealed proposals under § 13-104 or § 13-105 of this
9 subtitle;

10 (2) noncompetitive negotiation under § 13-106 of this subtitle;

11 (3) sole source procurement under § 13-107 of this subtitle;

12 (4) emergency or expedited procurement under § 13-108 of this subtitle;

13 (5) small procurement under § 13-109 of this subtitle;

14 (6) an intergovernmental cooperative purchasing agreement under §
15 13-110 of this subtitle;

16 (7) auction bids under § 13-111 of this subtitle; or

17 (8) an unsolicited proposal under § 13-107.1 of this subtitle.

18 ~~13-103.~~

19 (a) (1) Whenever procurement is based on competitive sealed bids, a
20 procurement officer shall seek bids by issuing an invitation for bids.

21 (2) Subject to subsection (b) of this section, an invitation for bids shall
22 include:

23 (i) the specifications of the procurement contract;

24 (ii) whether the procurement contract will be awarded based on the
25 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
26 11-202(3) of this article, the bid most favorable to the State;

27 (iii) if the procurement contract will be based on evaluated bid price,
28 the objective measurable criteria by which the lowest evaluated bid price will be
29 determined; and

30 (iv) if the Secretary of General Services, the Secretary of
31 Transportation, or the Chancellor of the University System of Maryland has so
32 designated, the small business preference.

1 (e) (1) (I) ~~[After] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS~~
 2 ~~PARAGRAPH, AFTER~~ obtaining any approval required by law, the procurement officer
 3 shall award the procurement contract to the responsible bidder who submits the
 4 responsive bid that:

- 5 (i) 1. is the lowest bid price;
- 6 (ii) 2. if the invitation for bids so provides, is the lowest
 7 evaluated bid price; or
- 8 (iii) 3. for procurement subject to § 11-202(3) of this article, is the
 9 bid most favorable to the State.

10 (H) ~~FOR THE DESIGN AND CONSTRUCTION OF A NEW BUILDING~~
 11 ~~THAT IS STATE OWNED OR THAT IS DESIGNED OR CONSTRUCTED USING STATE~~
 12 ~~FUNDS, THE PROCUREMENT OFFICER SHALL AWARD THE PROCUREMENT CONTRACT~~
 13 ~~TO THE RESPONSIBLE BIDDER WITH THE LOWEST RESPONSIVE BID PRICE OR~~
 14 ~~EVALUATED BID PRICE FOR A HIGH PERFORMANCE BUILDING IF THE DIFFERENCE~~
 15 ~~OVER WHICH THAT BID EXCEEDS THE LOWEST RESPONSIVE BID PRICE OR~~
 16 ~~EVALUATED BID PRICE FOR A BUILDING THAT IS NOT A HIGH PERFORMANCE~~
 17 ~~BUILDING DOES NOT EXCEED 10%.~~

18 ~~13-104.~~

19 (a) Competitive sealed proposals may be used if:

- 20 (1) the procurement is for human, social, cultural, or educational
 21 services;
- 22 (2) with the approval of the head of a unit, the procurement officer
 23 determines that specifications cannot be prepared that allow an award based on the
 24 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
 25 11-202(3) of this article, the bid most favorable to the State; or
- 26 (3) the head of the unit determines that:
 - 27 (i) the need to use a method other than competitive sealed bids is
 28 sufficiently compelling to override the general public policy that favors awarding
 29 procurement contracts on the basis of competitive sealed bids; and
 - 30 (ii) the use of competitive sealed bidding for that procurement
 31 contract is not practicable or not advantageous to the State.

32 (b) (1) ~~Whenever procurement is based on competitive sealed proposals, a~~
 33 ~~procurement officer shall seek proposals by issuing a request for proposals.~~

34 (2) A request for proposals shall include a statement of:

- 35 (i) the scope of the procurement contract;

1 (ii) the factors[, including price,] that will be used in evaluating
 2 proposals, ~~INCLUDING PRICE AND, IF APPLICABLE, THE HIGH PERFORMANCE~~
 3 ~~BUILDINGS PREFERENCE UNDER SUBSECTION (F) OF THIS SECTION;~~ and

4 (iii) the relative importance of each factor.

5 (f) (1) ~~After obtaining any approval required by law, the procurement~~
 6 ~~officer shall award the procurement contract to the responsible offeror who submits~~
 7 ~~the proposal or best and final offer determined to be the most advantageous to the~~
 8 ~~State considering the evaluation factors set forth in the request for proposals.~~

9 (2) ~~IN EVALUATING A PROPOSAL FOR THE DESIGN AND CONSTRUCTION~~
 10 ~~OF A NEW BUILDING THAT IS STATE OWNED OR THAT IS DESIGNED OR~~
 11 ~~CONSTRUCTED WITH STATE FUNDS, THE PROCUREMENT OFFICER SHALL INCREASE~~
 12 ~~THE EVALUATED PRICE FACTOR BY 10% FOR A RESPONSIVE BID FOR A HIGH~~
 13 ~~PERFORMANCE BUILDING.~~

14 3-602.

15 (d) (1) IN THIS SUBSECTION, "HIGH PERFORMANCE BUILDING" MEANS A
 16 BUILDING THAT ACHIEVES AT LEAST:

17 (I) A SILVER RATING ACCORDING TO THE U.S. GREEN BUILDING
 18 COUNCIL'S LEED (LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN) GREEN
 19 BUILDING RATING SYSTEM AS ADOPTED BY THE MARYLAND GREEN BUILDING
 20 COUNCIL; OR

21 (II) A COMPARABLE RATING ACCORDING TO ANY OTHER
 22 APPROPRIATE RATING SYSTEM, GUIDELINE, OR STANDARD.

23 [(1)] (2) Before an appropriation may be authorized for preliminary
 24 planning of a proposed capital project:

25 (i) the unit of the State government requesting the appropriation
 26 shall submit to the Department a program describing, in detail[,]:

27 1. the scope and purpose of the project; and

28 2. THE JUSTIFICATION FOR PROPOSING THAT A BUILDING
 29 IN THE PROJECT SHOULD BE DESIGNED AS A HIGH PERFORMANCE BUILDING; AND

30 (ii) the Secretary of Budget and Management must approve the
 31 program.

32 [(2)] (3) Before an appropriation may be authorized for construction of a
 33 proposed capital project:

34 (i) the unit of State government requesting the appropriation shall
 35 submit to the Departments of Budget and Management and General Services a

1 detailed design program, which shall include all information required by the
2 Departments; and

3 (ii) both the Secretary of Budget and Management and the
4 Secretary of General Services must approve the detailed design program.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
6 effect October 1, 2004.